

A-5913:
Variance

A retroactive variance to maintain a picket fence measuring four (4) feet in height in the Kirkside Drive public right-of-way which was replaced without an applicable Building Permit and License to Use the Public Right-of-Way.

Mrs. Alice W. Kinter and
Mr. George L. Kinter
121 Hesketh Street

121 Hesketh Street



Figure 1: View of 121 Hesketh Street.



Figure 2: View of fence and Kirkside Drive public right-of-way.

**CHEVY CHASE VILLAGE
NOTICE OF PUBLIC HEARING**

Please take notice that the Chevy Chase Village Board of Managers will hold a public hearing on the 16th day of May, 2011 at 7:30 p.m. The hearing will be held at the Chevy Chase Village Hall at 5906 Connecticut Avenue in Chevy Chase, Maryland.

**APPEAL NUMBER A-5913
MRS. ALICE W. KINTER &
MR. GEORGE L. KINTER
121 HESKETH STREET
CHEVY CHASE, MARYLAND 20815**

The applicants have filed a request for a variance from the Board of Managers pursuant to Section 8-12 of the Chevy Chase Village Building Code. The applicants request a retroactive variance to maintain a picket fence measuring four (4) feet in height in the Kirkside Drive public right-of-way which was replaced without an applicable Building Permit and License to Use the Public Right-of-Way.

The Chevy Chase Village Code § 8-27 states in pertinent part:

The public property located between public sidewalks and abutting private property (or in the absence of sidewalks, located between the paved roadways and abutting private property where such public property is under the immediate care and keeping by an abutting property owner or occupant shall be considered to be public right-of-way devoted to private use. The Village, by this Chapter, grants to abutting property owners or occupants so using the public right-of-way a license to continue to use the public right-of-way, subject to the provisions of Section 8-31; provided that this license may be revoked at any time by the Village in accordance with the provision of this Chapter. In no case shall any part of any unimproved public right-of-way (a right-of-way which has not been improved with a paved roadway) be considered to be a public right-of-way devoted to private use, and no license to use such right of way shall be implied and no license may be issued by the Board of Managers or the Village Manager.

Additional information regarding this appeal may be obtained at the Chevy Chase Village Office between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday, may be viewed on the Village website at www.chevychasevillagemd.gov or you may contact the office for this information to be mailed to you.

This notice was mailed to abutting property owners on the 6th day of May, 2011.

**Chevy Chase Village Office
5906 Connecticut Avenue
Chevy Chase, Maryland 20815
301-654-7300**

MAILING LIST FOR APPEAL A-5913

MRS. ALICE W. KINTER &
MR. GEORGE L. KINTER
121 HESKETH STREET
CHEVY CHASE, MD 20815

Adjoining and confronting property owners	
Mr. & Mrs. Robert E. Hartland Or Current Resident 125 Hesketh Street Chevy Chase, MD 20815	Ms. Margo J. Kingston Or Current Resident 126 Hesketh Street Chevy Chase, MD 20815
Ms. Tracey L. Webb & Mr. Richard A. Hertling Or Current Resident 119 Hesketh Street Chevy Chase, MD 20815	Ms. Marianne Bro & Mr. Robert J. Lawrence Or Current Resident 5902 Kirkside Drive Chevy Chase, MD 20815
Ms. Carol C. Coffin Or Current Resident 124 Hesketh Street Chevy Chase, MD 20815	Chevy Chase Country Club Or Current Occupant 6100 Connecticut Avenue Chevy Chase, MD 20815



I hereby certify that a public notice was mailed to the aforementioned property owners on the 6th day of May, 2011.

Ellen Sands, Permitting & Code Enforcement Coordinator
Chevy Chase Village
5906 Connecticut Avenue
Chevy Chase, MD 20815

CHEVY CHASE VILLAGE

ESTABLISHED 1890

May 6, 2011

Mrs. Alice W. Kinter &
Mr. George L. Kinter
37 Quincy Street
Chevy Chase, MD 20815

Dear Mr. & Mrs. Kinter:

Please note that your request for a retroactive variance to allow the maintenance of the four (4) foot picket fence in the Kirkside Drive public right-of-way is scheduled before the Board of Managers on Monday, May 16, 2011 at 7:30 p.m.

Either you or a representative must be in attendance to present your case. At that time, additional documents may be introduced and testimony can be provided in support of your request.

For your convenience, enclosed please find copies of the Public Hearing Notice and mailing list. Please contact the Village office in advance if you are unable to attend.

Sincerely,



Ellen Sands
Permitting & Code Enforcement Coordinator
Chevy Chase Village

Enclosures

CHEVY CHASE VILLAGE

5906 Connecticut Avenue
Chevy Chase, Maryland 20815

Phone (301) 654-7300

Fax (301) 907-9721

ccv@montgomerycountymd.gov
www.chevychasevillagemd.gov

SHANA R. DAVIS-COOK
Village Manager

DAVID R. PODOLSKY
Legal Counsel

BOARD OF MANAGERS

DAVID L. WINSTEAD
Chair

PETER T. KILBORN
Vice Chair

PETER M. YEO
Secretary

ALLISON W. SHUREN
Assistant Secretary

GAIL S. FELDMAN
Treasurer

LAWRENCE C. HEILMAN
Assistant Treasurer

PATRICIA S. BAPTISTE
Board Member

Chevy Chase Village Building Permit Application for Fences & Walls

Permit No: A-5913

Property Address:

121 Hesketh St.

Resident Name: George/Alice Kinter

Daytime telephone: 301 656 3642 Cell phone:

After-hours telephone:

E-mail: Kinter A Overizon.net Kinterg Overizon.net

Primary Contact for Project:

☒ Resident ☐ Architect ☐ Project Manager ☐ Contractor*

*MHIC/MD Contractor's License No. (required):

Contractor Contact Information:

Name: DAVE JONES

Business: KENSINGTON RESIDENTIAL SERVICES

Daytime telephone: 301 96 20038 After-hours telephone:

Fax:

E-mail:

Description of Fence or Wall Project: Four Feet
Picket

Check appropriate box:

☐ Fence or wall to be constructed is: (1) new, (2) an enlargement of an existing fence or wall, or (3) replacing an existing fence or wall with one of a different kind.

☒ Fence or wall to be constructed is replacing an existing fence or wall with the same kind and in the same location.

Parking Compliance:

Is adequate on-site parking available for the construction crews?

☒ Yes ☐ No

If no, please attach a parking plan which minimizes inconvenience to neighboring residents, and indicate if the property is in a permit parking area.

Will road closings be required due to deliveries, equipment or other reasons?

☐ Yes ☒ No

To be completed by Village staff:

Is this property within the historic district? Yes ☐

No ☒ Staff Initials: ES

Date application filed with Village: 4/5/11 Date permit issued: _____ Expiration date: _____

Guidelines for Building, Replacing and Maintaining Fences and Walls

Sec. 8-22 of the Village Code regulates fences and walls. To repair or maintain an existing fence or wall, the Village does not require a building permit. To install or replace a fence or wall, however, residents will need a Village building permit. (A building permit may also be required from Montgomery County, including the Historic Preservation Commission if the property is within the Historic District). Village Code allows fences and walls to be installed on a resident's property lines, inside the property lines on private property, and sometimes in the public right-of-way.

When placed on the property lines or on private property, the Village Code regulates fence and wall heights in two ways:

1. Fences and walls installed on private property anywhere between the property line and the front building restriction line may not exceed four feet (4') in height.
2. Fences and walls installed to the rear of the front building restriction line (that is, along the side and rear property lines or in the side and rear yards) may not exceed six and one half feet (6½') in height.

When measuring the height of a fence or wall, the Village Code provides that the "measurement shall be made from the surface of the ground of the lower yard next to the fence or wall" **to the highest point of the fence or wall** (such as the top of the posts, caps, decorative lattice, finials, etc.). For example, if a fence post is 6½ feet high, then a cap on that post would exceed the height limit.

Walls can sometimes change the flow of water on a property. In such cases, residents or contractors will need to include a drainage plan with the building application.

When installing a fence or wall in the Village's public right-of-way, in addition to obtaining a Village Building Permit, residents must sign a **License to Use the Public Right-of-Way**, which will be recorded with your deed (please contact the Village office for more information). Fences and walls installed in the Village's rights-of-way may not exceed four feet (4') in height. Fences in the Village's rights-of-way must be installed at least two feet (2') from the public sidewalk, or where there is no sidewalk, at least five feet (5') from the curb or nearest edge of the paved roadway. Walls in the Village's public rights-of-way must be installed at least three feet (3') from the public sidewalk, or where there is no sidewalk, six feet (6') from the curb or nearest edge of the paved roadway. The Village office will not issue permits for any fences or walls that block necessary sight lines at intersections or otherwise create a dangerous condition.

For all Village Code requirements, please see to Sections 8-4, 8-22, and 8-31.

**Building Permit Application for Fences and/or Walls:
Filing Requirements**

*Application will not be reviewed until the application is complete
Village permits will not be issued until all county permits have been issued*

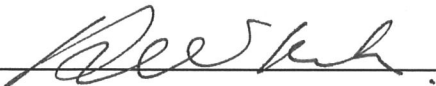
- ☐ Copy of stamped drawings approved by Montgomery Co. Dept. of Permitting Services (DPS) and the Historic Preservation Commission (HPC), if required. Every page of drawings must be clearly stamped.
- ☐ This application form, signed by resident.
- ☐ Boundary Survey or Plat
- ☐ Site Plan (see: Village Site Plan Checklist to ensure completeness)
- ☐ Building plans and specifications
- ☐ Tree Preservation Plan requested of Village arborist (see: Village Tree Inspection Request form). All required tree protections must be fully installed before any work begins.
- ☐ Filing Fee (due at time of application). Fee schedule is listed in Chapter 6 of the Village Code.
- ☐ Damage deposit or performance bond (due when permit is issued). Amount will be set by Village Manager.

Once this permit application is complete, the Village Manager will review the application and accompanying documents and, under most circumstances, act on the application within 5 to 10 working days.

If the Montgomery County permit is suspended, revoked or lapsed, the Village permit is automatically suspended, revoked or lapsed.

No signs advertising any service provider may be posted on the work site.

I hereby certify that I have the authority to make the foregoing application, that the application is correct, that I have read and understood all requirements and that the construction will conform to the regulations of the Montgomery County Zoning Code, the Village Code including Urban Forest code, and any covenants and easements on the subject property.

Applicant's Signature:  **Date:** 8.5.11

For Use By Village Manager	Application approved with the following conditions:
For Use By Village Manager <div style="border: 2px solid black; padding: 10px; text-align: center;"> D E N I E D APR - 5 2011 Chevy Chase Village Manager </div>	Application denied for the following reasons: <i>Section 8-27 does not permit the issuance of a permit or license to devote an Unpaved Right-of-way to Private use</i>

Filing Fees (due when application submitted)	Checks Payable to:
Permit Application Fee: <input type="checkbox"/> \$30.00 (if fence or wall is new, enlarged or replaced with different kind) <input checked="" type="checkbox"/> \$15.00 (if fence or wall is being replaced in-kind and in the same location) <input type="checkbox"/> \$50.00 (additional fee if construction is in the Right-Of-Way)	Chevy Chase Village 5906 Connecticut Ave. Chevy Chase, MD 20815
Tree Preservation Plan Fee: <input type="checkbox"/> \$250.00 <input checked="" type="checkbox"/> Not required for this project	
TOTAL Fees: <i>\$15.00</i>	Date: <i>4/5/11</i> Staff Signature: <i>Ellen J. Smith</i>
Damage Deposit/Performance Bond <input type="checkbox"/> \$ _____ <input type="checkbox"/> Waived by Village Manager	Date: _____ Staff Signature: _____

For Village Staff use:

Field file for inspections by Code Enforcement Officer has been created: ☐ Yes (Date: _____)

Chevy Chase Village

Application for a Variance

A variance is permission granted to a landowner to depart from the specific requirements of the Village zoning ordinance and allows a landowner to use land differently than specified in the ordinance. The variance is a written authorization from the Board of Managers permitting construction in a manner not otherwise allowed by the Village Code.

Subject Property: 121 HOSKETH ST.	
Describe the Proposed Project: 4' WOODEN PICKET FENCE	
Applicant Name(s) (List all property owners): George / Alice Kinter	
Daytime telephone: 301 656 3642	Cell:
E-mail: Kinter A @ VERIZON.NET	
Address (if different from property address):	
For Village staff use:	Date this form received: 5/4/11 Variance No: A-5813

Filing Requirements:

Application will not be accepted or reviewed until the application is complete

- ☒ Completed Chevy Chase Village Application for a Variance (this form)
- ☒ Completed Chevy Chase Village Building Permit Application
- ☒ A boundary survey or plat diagram with a margin of error of one tenth of a foot or less showing all existing structures, projections and impervious surfaces.
- ☐ Surveys, plats, engineering reports, construction plans/specifications or other accurate drawings showing boundaries, dimensions, and area of the property, as well as the location and dimensions of all structures/fences/walls/etc., existing and proposed to be erected, and the distances of such structures/fences/walls/etc., from the nearest property lines. These drawings shall incorporate and display reference dimensions from the boundary survey or plat diagram required above.
- ☐ Copy of Covenants applicable to the property except for variances from Sections 8-22, 8-26 or Article IV of Chapter 8 of the Chevy Chase Village Code. If there are no covenants, provide a letter from an attorney or the title insurance carrier stating that there are no covenants.
- ☒ Variance fee (See fee schedule listed in Chapter 6 of the Village Code).

Affidavit

I hereby certify that I have the authority to submit the foregoing application, that all owners of the property have signed below, that I have read and understand all requirements and that I or an authorized representative will appear at the scheduled public hearing in this matter. I hereby authorize the Village Manager, or the Manager's designee, and/or the Board of Managers to enter onto the subject property for the purposes of assessing the site in relation to this variance request. I hereby declare and affirm, under penalty of perjury, that all matters and facts set forth in the foregoing application are true and correct to the best of my knowledge, information and belief.

Applicant's Signature: [Signature]

Date: 5/4/11

Applicant's Signature: [Signature]

Date: 5.4.11

Describe the basis for the variance request (attach additional pages as needed).

Describe the special conditions of the property (e.g., odd shape, small size, sloping topography, abuts state highway, etc.) and how the property compares to other properties in the Village:

Side yard abuts the Kirkside drive
Right of way. There was a fence when we bought the property in 1966, and we have replaced it twice. It gets heavy wear from young people climbing over it (despite having a gate!) to retrieve holes and our dogs ^{front} climbing up to see.

Describe how enforcement of the building regulations would result in an unwarranted hardship and injustice because of the special condition(s) described above (i.e., describe (i) the unwarranted hardship and injustice that you claim exists and (ii) how the special conditions cause that unwarranted hardship and injustice):

Relocating The fence would necessitate moving many shrubs, a huge magnolia tree and the edge of the terrace which existed when we purchased the property.

Describe how the proposed variance most nearly accomplishes the intent and purpose of the requirements of Chapter 8 of the Chevy Chase Village Code, entitled *Buildings and Building Regulations*:

We are replacing an existing fence. We planned to simply replace two rotten posts but found out that the whole fence was old and had more rotten posts.
In exercising its powers in connection with a variance request, the Chevy Chase Village Board of Managers may reverse or affirm, wholly or partly, or may modify the requirement, decision or determination as it deems appropriate.

Variance Filing Fee	Checks Payable To: Chevy Chase Village 5906 Connecticut Ave. Chevy Chase, MD 20815
<i>Per Village Code Sec. 6-2(a)(24):</i> <input type="checkbox"/> \$300.00 for new construction. <input type="checkbox"/> \$150.00 for replacing existing non-conformities. <input type="checkbox"/> \$300.00 for fences, walls, play equipment, trees, hedges, shrubbery in the public right-of-way. <input type="checkbox"/> Other: \$ _____ Fee Paid:	Date Paid: Staff Signature:

April 7, 2011

Mr. David Winstead
Chairman
Chevy Chase Village Board of Managers
5906 Connecticut Avenue
Chevy Chase, MD 20815

Dear Mr. Winstead,

I am writing to request the Board's approval of a variance for a picket fence built on the west side of our property on the same location as the rotting non-compiling fence that it replaced. I am attaching a copy of the plat of our property at 121 Hesketh Street that shows the location of the fence that existed at the time we purchased the property in 1966 (marked with a yellow highlighter). The new fence is built along the same line.

I would welcome you or other members of the Board at any time that you wish to look at the fence before taking action on my request. The fence is needed because we have a pet dog due to arrive from my daughter's house in Vermont within a week or two.

Thank you for your consideration of this request,

George Kinter

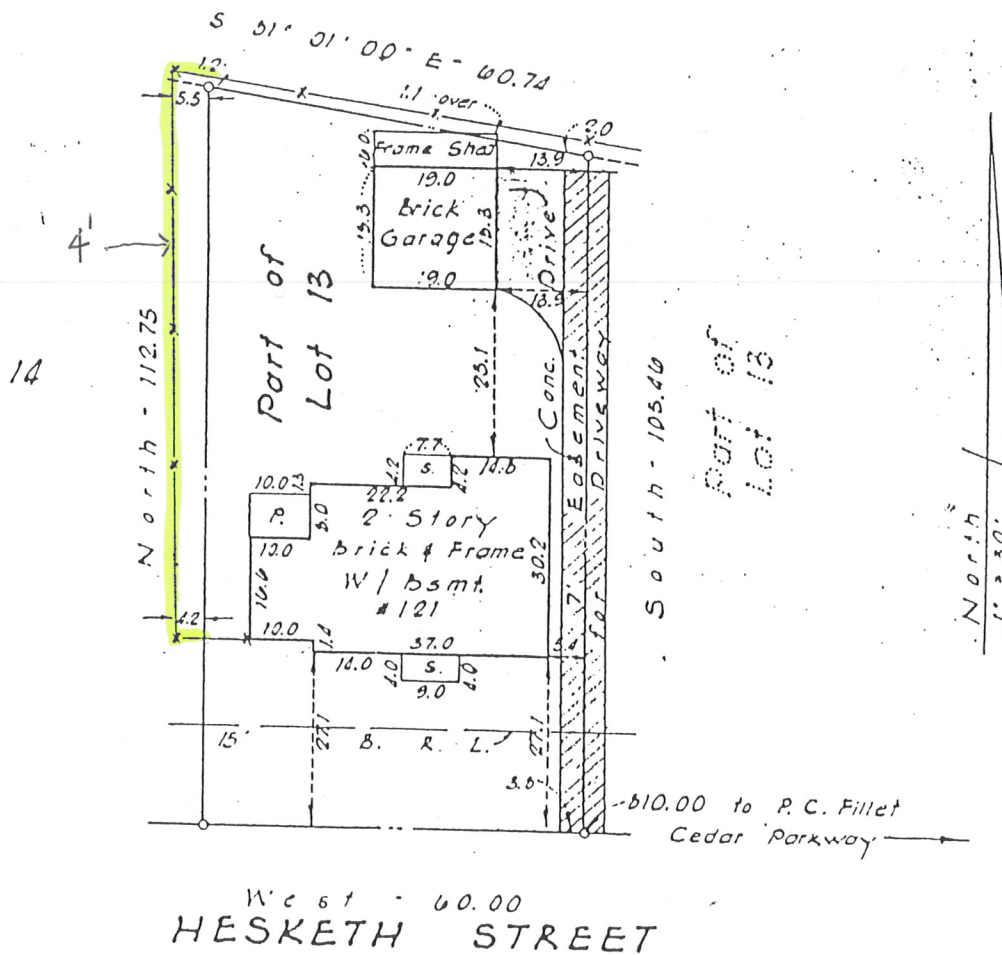
Case Md 22755

Surveyor's Certificate

Plat Book	3
Plat	273

E. J. Shepherd Jr

E. J. Shepherd, Jr.
Md. Reg. No. 2539



File No. 63-429

ANCEL 'B', BLOCK 1

PT 15

PT. 13

